March 11, 1915, PULLING, MANUAL OF EMERG. LEGIS., Supp. III, 513. These reprisal orders, though entirely legal as against the enemy, are of no more than doubtful binding force upon the Prize Court in so far as they deprive neutrals of their rights under international law. See *The Zamora*, [1916] 2 A. C. 77, 90. If they do thus destroy the rights of neutrals, they are undoubtedly a fit subject for diplomatic protest. See "Note of Secy. of State to Ambassador W. H. Page," Oct. 21, 1915, 10 AM. JOURN. INT. LAW, 73, 84. See also 52 LAW JOURN. 146; PAGE, WAR AND ALIEN ENEMIES, 2 ed., 57.

INTERSTATE COMMERCE — WHAT CONSTITUTES INTERSTATE COMMERCE — PROFESSIONAL BASEBALL. — Action for damages under the Sherman Anti-Trust Act against the professional baseball leagues on the ground that they were, through their contracts with players, acting in restraint of interstate trade. *Held*, that professional baseball is not trade within the meaning of the Act. *The National League of Professional Baseball Clubs, National Exhibition Co. et al.* v. *The Federal Baseball Club of Baltimore, Inc.*, 48 Wash. L. Rep. 819 (D. C.).

Congress has power to regulate commerce among the several states. See CONST., Art. 1, § 8. Early decisions under the commerce clause, seeking to determine what activities it included, seemed to embody a sale as the essence of interstate commerce. See *Paul* v. *Virginia*, 8 Wall. (U. S.) 168, 183. The fallacy of that view has been pointed out. See COOKE, THE COMMERCE CLAUSE IN THE FEDERAL CONSTITUTION, §§ 7–9. It has led to one palpably incorrect decision. See *Smith* v. *Jackson*, 103 Tenn. 673, 54 S. W. 981. The federal power to regulate was crystallized in the Sherman Anti-Trust Act of 1890, which prohibits the restraint of interstate commerce. See 26 STAT. AT L. 209; 3 U. S. S. A. 559. It has always been recognized that federal regulation was not intended to embrace every detail of interstate commercial activity. See *Hooper* v. *California*, 155 U. S. 648, 655. Thus, under the act, the presentation of grand opera by a company on tour has not been considered interstate commerce. *Metropolitan Opera Co.* v. *Hammerstein*, 162 App. Div. 691, 147 N. Y. Supp. 532. The same is true of producing plays in various states. *People* v. *Klaw*, 55 Misc. 72, 106 N. Y. Supp. 341. The true criterion by which to test the act's applicability has been laid down by Judge Learned Hand: Is the interstate feature essential or incidental to the business involved? See *Marienelli* v. *United Booking Offices*, 227 Fed. 165, 170. That the interstate shipment of players and paraphernalia is perforce interstate commerce does not bring the leagues therefore within the act. In baseball, the game's the thing, not the transportation incidental thereto. *American Baseball Club of Chicago* v. *Chase*, 86 Misc. 441, 149 N. Y. Supp. 6, *accord*.

JUDGMENT — SETTING ASIDE AND VACATING JUDGMENTS — NEGLIGENCE OF ATTORNEY. — A statute provides that a court may vacate a judgment taken against a party on account of his "mistake, inadvertence, surprise, or excusable neglect." (BURNS IND. STATUTES, 1914, § 405.) The attorney for the defendant relied on information given him by another attorney and did not appear at the time fixed for trial. The trial was called in his absence and judgment was given by default. Immediately thereafter the defendant appeared, set out a meritorious defense, and applied to have the judgment vacated. The application was overruled. *Held*, that the judgment be affirmed. *Krill* v. *Carlson*, 128 N. E. 612 (Ind.).

The majority of the courts in the United States regard the negligence of the attorney as the negligence of the client and refuse to vacate a judgment caused by the negligence of the attorney. *Welch* v. *Challen*, 31 Kan. 696, 3 Pac. 314; *Kreite* v. *Kreite*, 93 Ind. 583; *Lindsey* v. *Goodman*, 57 Okla. 408, 157 Pac. 344. See 1 BLACK, JUDGMENTS, 2 ed., § 341. In at least two jurisdictions,

however, a judgment caused by the attorney's negligence will be vacated if the party has a meritorious defense. See *Gideon* v. *Dwyer*, 40 N. Y. Supp. 1053; *Gallins* v. *Globe Rutgers Fire Ins. Co.*, 174 N. C. 553, 94 S. E. 300. And recently jurisdictions that formerly followed the rule of refusing to vacate judgments when the attorney was negligent have created exceptions in extreme cases. See *Patterson* v. *Uncle Sam Oil Co.*, 101 Kan. 40, 165 Pac. 661; *Southwestern Surety Co.* v. *Treadway*, 113 Miss. 189, 74 So. 143. Other jurisdictions, where justice demanded it, have gone a long way to vacate judgments by construing the negligence of the attorney as "excusable neglect." *Reilley* v. *Kinkead*, 181 Ia. 615, 165 N. W. 80; *Citizens Bank* v. *Branden*, 19 N. D. 489, 126 N. W. 102; *Nelson* v. *Minder*, 41 S. D. 150, 169 N. W. 549. It seems that, in the interest of justice between the parties, the lower court in the present case might well have construed the doubts in favor of the application and vacated the judgment. See *Miller* v. *Carr*, 116 Cal. 378, 48 Pac. 324. But in such a case the lower court must be given a wide discretion, and the refusal of the upper court to reverse is therefore justified. See *Rogers* v. *Cummings*, 11 Ia. 459; *Scott* v. *Smith*, 133 Mo. 618, 34 S. W. 864. See 1 FREEMAN, JUDGMENTS, 4 ed., § 106.

LETTERS OF CREDIT — VALIDITY — RELATION OF THE BUYER-SELLER CONTRACT TO THE LETTER OF CREDIT. — The defendant issued a letter of credit addressed to a seller payable on performance of a contract between the seller and the buyer. The defendant refused payment on the ground that the sales contract had become impossible of performance. *Held*, that this is no defense to the letter of credit. *American Steel Co.* v. *Irving National Bank*, 266 Fed. 41 (C. C. A., 2d Circ.).

A buyer and seller entered into a contract for the manufacture and sale of goods, the conditions of which were that the buyer should procure from the National City Bank a letter of credit addressed to the seller, that shipments and payments should be made by instalments, that the seller should draw on the bank upon shipment of each instalment, and that if any shipment should be delayed a specified length of time the buyer had the option of cancelling that instalment. The letter of credit was accordingly procured. Subsequently the seller was unable to supply one shipment, and the buyer exercised his option of cancellation. The buyer sought to enjoin the seller from drawing that particular draft and the bank from paying it. *Held*, that the injunction be denied. *Frey & Son* v. *Sherburne & Co. and the National City Bank*, 184 N. Y. Supp. 661.

For a discussion of the principles involved in these cases, see NOTES, p. 533, *supra*.

LIMITATION OF ACTION — NEW PROMISE — EFFECT OF ACCOUNT STATED — ACCOUNT STATED BY RETENTION. — A statute requires that a new promise, to take a debt out of the statute of limitations, must be in writing. (MONT. CODE CIV. PROC., § 555.) The defendant became indebted to the plaintiff for goods sold and delivered. Shortly afterwards the plaintiff rendered an account which the defendant retained without objecting. In an action the defendant pleads the statute of limitations. The statutory period has run from the date of the original debt but not from the date of the account stated. *Held*, that the statute is not a defense. *O'Hanlon Co.* v. *Jess*, 193 Pac. 65 (Mont.).

It is generally held that the retention of an account rendered, without objection, is evidence of an assent thereto, creating an account stated. *Baltimore & Ohio Ry.* v. *Berkeley Springs Ry.*, 168 Fed. 770; *Locke* v. *Woodman*, 216 S. W. 1006 (Mo. App.). A distinction should be drawn between an account stated as a computation and one stated as a compromise. The former constitutes a new promise to pay a prior indebtedness. *Chase* v. *Trafford*, 116 Mass. 529.